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EXAMINER

STASHICK, ANTHONY D

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21

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 21

Application Number: 09/830,245
Filing Date: July 9, 2001
Appellant(s): EVANGELISTI ET AL.

MAILED
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GROUP 3700

Mark B. Quatt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 27, 2003.

(1) *Real Party in Interest*

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A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 22-42 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

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The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,869,050	Furukawa	09-1989
4,471,599	Mugnai	09-1984
6,227,377	Bonnet	05-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. Claims 22-42 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The addition of the limitation "permanently" to claim 22 appears to be an addition of new matter. There appears to be no support in the specification as originally filed for this limitation in the claim. The specification discloses the ability to stack and unstack the vacuum chambers, which would be

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contrary to the limitations of them being a "permanently vertical stack" as now claimed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 22-26, 32, 38 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Furukawa 4,869,050. Furukawa '050 discloses all the limitations of the claims including the following: a vacuum packaging machine (see Figure 4) comprising a vertical stack of vacuum chambers 103 each arranged to receive at least one unsealed product package 130; the chambers operable to perform an independent vacuum sealing operation on the product package; a conveyor arranged to load and unload the chambers (conveyors to load or feed-in and unload or feed out are 106, 107 respectively); the machine being operable to operate respective vacuum chambers while conveyor is operated to load and unload other chambers (chambers not adjacent 106 or 107 are in the sealing stage while those at 106

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and 106 are at the loading/unloading stage); the machine and conveyor are arranged to load and unload vacuum chambers in a cyclical sequence (that which follows the rotation of the chambers and synchronously to operate the vacuum chambers on the product (loading and unloading occurs at those chambers adjacent 106 and 107 at the same time that sealing occurs at those chambers not adjacent 106 and 107)); the number of chambers is sufficient to the duration of the vacuum sealing operation allowing the conveyor to operate continuously (i.e. when the chambers reach 106, a package can be placed within the empty chamber and when the chamber reaches 107, the chamber can have the sealed container removed, thereby emptying the chamber for movement to 106); chambers can be added or removed (remove from arm or place on arm); vacuum chambers are movable relative to the conveyor (see Figure 4) to select the vacuum chamber to be loaded or unloaded at 106 and 107 respectively.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 30, 31, 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furukawa 4,869,050, as applied to claims 22 and 26, in view of Mugnai 4,471,599. Furukawa '050 discloses all the limitations of the claims as applied to claims 22 and 26 above, including the vacuum chamber having a base and cover wherein the cover is fixed and the base moves (see Figure 4) but does not disclose the vacuum chambers having an internal conveyor and sealing bar for sealing the product package. Mugnai '599 teaches that a vacuum chamber 1 can have an internal conveyor (5, 31), which allows for the product to be easily moved into and out of the chamber. Mugnai '599 also teaches that the chamber can contain a sealing bar 18 that aids in sealing the package during the vacuum phase. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a conveyor and sealing bar, such as that taught in Mugnai '599, in the vacuum chambers of Furukawa '050 to allow for easy entrance and exit of the product package with the feed-in and feed-out conveyors as well as to seal the mouth of the bag with the sealing bar during the vacuuming operation.

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7. Claims 27-29 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furukawa 4,869,050 as applied to claims 26 and 32 above, in view of Bonnet 6,227,377. Furukawa '050 discloses all the limitations of the claims, including the spacing between the vacuum chambers, but does not disclose the multiple feed-in and feed-out conveyors, the vertical movability of the feed-in and feed-out conveyors. Bonnet '377 teaches that a conveyor can be vertically adjusted to allow for the conveyor to be selectively positioned at different vertical levels in a feed-in and feed-out operation. Therefore, it would have been obvious, to make the feed-in and feed-out conveyors of Furukawa '050 vertically adjustable to place the feed-in of the chambers and the feed-out of the chambers at any level where the chambers may stop in rotations. With respect to the multiple in and out conveyors and the modular ability, it appears to be a mere matter of design choice and product demand as well as a mere matter of duplicity and time needed to seal the packages in the vacuum chambers to have more than one feed-in and feed-out conveyor.

Response to Arguments

8. Applicant's arguments filed July 3, 2003 have been fully considered but they are not persuasive. Applicant argues that

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the vacuum chambers of Furukawa are not permanently stacked and that the machine of Furukawa does not give the advantages obtained by the instant application because the rotating wheel takes up a great deal of floor space. It appears that applicant is arguing more than that which is claimed as well as that which is not disclosed in the application as originally filed. With respect to the argument directed to the "permanent" idea, applicant's attention is directed to paragraph 2 above. With respect to the argument of floor space, the invention in Furukawa does save floor space as that area that would be covered by the six shown chambers of Furukawa would take up more floor space if located side-by-side than as arranged as shown in Furukawa.

(11) Response to Argument

1. 35 U.S.C. § 112, first paragraph issue.

Appellant argues that the addition of the term "permanently" in front of the term "vertically stacked", although not appearing *ipsissimus verbis*, has support in the specification as originally filed as denoted in the Appeal Brief on page 10, paragraph 3. However, when reading the appellant's disclosure, appellant states, "Each vacuum chamber 4 has a modular construction allowing vacuum chambers to be added or

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removed from the vacuum packaging machine." (see page 5, lines 21-22 of Specification as originally filed). Therefore, this implies that the vacuum chambers are not permanently stacked as chambers can be added or removed. A permanently stacked group of chambers would imply that a chamber cannot be removed, thereby going against the modular construction desired and disclosed by the appellant. With respect to the "vertically stacked" issue raised by the appellant, this argument was addressed in the Final Office Action dated February 26, 2003 and is hereby restated for convenience. "Applicant argues that the chambers of Furukawa '050 are not vertically stacked. This argument is not clearly understood. Applicant states in lines 8-12 of his arguments under 35 U.S.C. § 102 (See Paper No. 12, page 5, last paragraph, starting at the end of line 3)

"Vertically stacked vacuum chambers are illustrated in Figures 2 to 5 of the application. Therefore, "vertically stacked" means one (sic) on top of the other, like the floors in a building; not necessarily one touching the other...". Since the vacuum chambers of Furukawa '050 are located one above the other, not necessarily touching, they meet this limitation as argued by the applicant." It appears that what appellant is attempting to claim is that the sealing ovens remain stationary during the entire sealing process cycle, but the appellant's claim language

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fails to overcome the prior art as applied as there is no requirement in the claim language that claims the ovens in a stationary vertical position during the entire process cycle.

2. Response to the arguments based on the 35 U.S.C. § 102(b) rejection based on Furukawa '050.

Appellant argues that Furukawa '050 does not disclose a permanently vertical stack of vacuum chambers. This argument is also not clearly understood. Based on appellants own description of a "stacked vertical chamber", as noted above, Furukawa '050 discloses a group of permanently stacked vertical chambers as specifically shown in Figures 1 and 6, as these chambers are stacked in a "Ferris Wheel" arrangement. There is no requirement that the chambers overlap entirely or in part but only that they are located "one above another". Since Furukawa '050 would meet this limitation of the claims as shown in Figures 1 and 6, Furukawa '050 would have ovens that are "stacked vertical chambers" as required by the claim language. Appellant even supports this in the arguments (page 11 of Brief, last 2 lines through page 12, line 4) "It is true that if you have an even number of chambers suspended on the rotor edge, you might have one instant where one of the rotating vacuum chambers is "over" another one (see for instance in the figure on the cover page of the Furukawa patent, the chambers on the right top

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and right bottom side) and this configuration may be viewed as a configuration comprising a vertical stack of some of the vacuum chambers." Therefore, it is believed that Furukawa '050 meets the limitations as claimed. Furukawa '050 also would meet the limitation of being "permanently" stacked as the ovens of Furukawa are constantly stacked one over the other, even through the rotation cycle, there is always one oven below or above another oven.

3. Response to arguments directed to the 35 U.S.C. 103(a) rejection of Furukawa '050 in view of Mugnai '599.

Appellant relies upon the remarks directed to Furukawa '050 and therefore, the response to these remarks, since noted above, will not be repeated here.

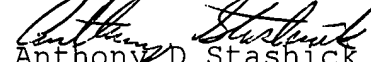
4. Response to arguments directed to the 35 U.S.C. 103(a) rejection of Furukawa '050 in view of Bonnet '377.

Appellant relies upon the remarks directed to Furukawa '050 and therefore, the response to these remarks. Since noted above, will not be repeated here.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,


Anthony D Stashick
Primary Examiner
Art Unit 3728

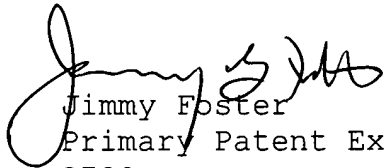
ADS

November 24, 2003

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